

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICK KELLEY,

Defendant.

8:21CR61**ORDER**

On February 18, 2021, defendant Rick Kelley (“Kelley”) was indicted alongside several codefendants (Filing No. 1) with conspiring to distribute misbranded drugs, conspiring to possess with intent to distribute mixtures or substances containing heroin and other controlled substances, and conspiring to commit money laundering. *See* 18 U.S.C. § 371 and 1956(a)(2)(B)(i); 21 U.S.C. §§ 841(a)(1) and (b)(1), and 846. On March 17, 2025, Kelley moved to dismiss those charges (Filing No. 119) on the grounds that he had “disavowed the object(s) of the alleged conspiracy . . . more than five years before the Indictment” in this case was returned. As such, he claims the charges against him violate the applicable statute of limitations. *See* 18 U.S.C. § 3282 (generally providing that “no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found . . . within five years next after such offense shall have been committed”); *Smith v. United States*, 568 U.S. 106, 111-12 (2013) (explaining that withdrawal from a conspiracy “provides a complete defense when the withdrawal occurs beyond the applicable statute-of-limitations period” but that the burden falls on the defendant to prove that affirmative defense).

That motion was referred to the magistrate judge¹ in this case, who held a hearing on the matter on April 1, 2025. *See* 28 U.S.C. § 636(b)(1) (authorizing the Court to

¹The Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

designate a magistrate judge to assist with pretrial matters on dispositive motions); Fed. R. Crim. P. 59(b)(1) (same). According to the magistrate judge, Kelley withdrew his earlier request for an evidentiary hearing during that telephonic hearing.

Now before the Court is the magistrate judge's Findings and Recommendation (Filing No. 127) recommending the Court deny Kelley's motion. Given the allegations that Kelley engaged in overt acts in furtherance of the alleged conspiracy in March and May of 2016, the magistrate judge concluded that "the face of the Indictment plainly shows that the charges against [] Kelley are not barred by the statute of limitations." In his view, Kelley's explanations and evidence to the contrary "do not establish as a matter of law that he withdrew from the conspiracy" before then.

In recommending denial, the magistrate judge reminded the parties that they had fourteen days to file objections to his Findings and Recommendation and that their "[f]ailure to timely object may constitute a waiver of any such objection." *See* 28 U.S.C. § 636(b)(1); NECrR 59.2(a). Over a month has passed and no objections have been filed. That eliminates any need for further review by this Court. *See Peretz v. United States*, 501 U.S. 923, 939 (1991); *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609, 619-20 (8th Cir. 2009) ("[T]he failure to file objections eliminates not only the need for de novo review, but *any* review by the district court."). Given that,

IT IS ORDERED:

1. The magistrate judge's Findings and Recommendation (Filing No. 127) is accepted in its entirety. Any objections are deemed waived.
2. Defendant Rick Kelley's motion to dismiss the charges against him (Filing No. 119) is denied.

Dated this 6th day of May 2025.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge